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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1110

Miscellaneous No.

MATTHEW UNCIAK,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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INDEX.

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
1. Procedure	3
2. History of the Case	3
REASONS FOR GRANTING THE WRIT	5
I. The Decision of the Pennsylvania Court Raises Significant and Recurring Problems Which Have Received Conflicting Treatment From Other State and Federal Courts, and Which Have Not Yet Been Resolved by This Court	5
II. The Writ Should Be Granted to Determine a Significant Constitutional Question Never Decided in This Court, of the Utilization by Police of Trickery in Executing a Search Warrant	9
CONCLUSION	12
APPENDIX:	
Opinion and Judgment of the Superior Court of Pennsylvania	A1
Opinion and Judgment of the Court of Common Pleas of Lancaster County	A2
Order of Supreme Court of Pennsylvania	A8

TABLE OF CITATIONS.

Cases: Page

Bowers v. Coiner, 309 F. Supp. 1064 (S. D. W. Va. 1970) ... 8
Commonwealth v. Newman, 429 Pa. 657 (1968) 5,9
Commonwealth v. Riccardi, 220 Pa. Super. 72, 283 A. 2d 719 (1971) 5
Dickey v. United States, 332 F. 2d 773 (9th Cir. 1964) 7
Gatewood v. United States, 209 F. 2d 789 (D. C. Cir. 1953) .. 7
Leahy v. United States, 272 F. 2d 487 (9th Cir. 1959) 7
Miller v. United States, 357 U. S. 301 (1958) 8
Munoz v. United States, 325 F. 2d 23 (9th Cir. 1963) 11
People v. Quilan, 245 Calif. App. 2d 624, 54 Calif. Rptr. 294 (1966) 7
Ponce v. Craven, 409 F. 2d 621 (9th Cir. 1969) 7
Sabbath v. United States, 391 U. S. 585 (1968) ...5, 7, 9, 10, 11, 12
Smith v. United States, 357 F. 2d 486 (5th Cir. 1966) 7
United States v. Beale, 436 F. 2d 573 (5th Cir. 1971) 6
United States v. Beale, 445 F. 2d 977 (5th Cir. 1971) 6,7
United States v. Bradley, 455 F. 2d 1181 (1st Cir. 1971) 8
United States v. Burruss, 306 F. Supp. 915 (E. D. Pa. 1969) 8, 10
United States v. Conti, 361 F. 2d 153 (2nd Cir. 1966) 7
United States v. Macri, 185 F. Supp. 144 (1960) 8
United States v. Syler, 430 F. 2d 68 (7th Cir. 1970) 8
United States ex rel. Ametrane v. Gable, 276 F. Supp. 555 (E. D. Pa. 1967) 10
United States ex rel. Manduchi v. Tracy, 350 F. 2d 658 (1965) 10
Wong Sun v. United States, 371 U. S. 471 (1963) 8

Authorities:

H. Voorhees, Law of Arrest § 159 (1904) 11
Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 798 (1924) 11

U. S. Code:

18 U. S. C. § 3109 ..... 2, 6, 8, 9, 10
28 U. S. C. § 1257(3) 2

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1972.

MISCELLANEOUS NO. .

MATTHEW USCIAK,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

The Petitioner, MATTHEW USCIAK, respectfully prays that a Writ of Certiorari issue to review the denial of the Petition for Allowance of Appeal by the Supreme Court of Pennsylvania entered in this proceeding on December 11, 1972.

OPINION BELOW.

The per curiam opinion of the Superior Court of Pennsylvania appears in the Appendix hereto. No opinion was rendered by the Supreme Court of Pennsylvania, in its denial of the Petition for Allowance of Appeal. The opinion of the Court of Common Pleas of Lancaster County is also annexed hereto.

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JURISDICTION.

The denial of the Petition for Allowance of Appeal from the Judgment of the Superior Court of Pennsylvania was entered on December 11, 1972 by the Supreme Court of Pennsylvania. This petition has been filed within 90 days of that date. Judge Appel of the Court of Common Pleas of Lancaster County stayed execution of the judgment of sentence pending filing of this Writ. This Court's jurisdiction is invoked pursuant to 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

1. Was the utilization of a ruse, whereby a police officer gained entry into a home by disguising himself as a fireman and stating his purpose to be a fire prevention inspection, a violation of the Fourth Amendment?

STATUTORY PROVISIONS INVOLVED.

18 U. S. C. Section 3109.

Breaking Doors or Windows for Entry or Exit.

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

June 25, 1948, c. 645, 62 Stat. 820.

STATEMENT OF THE CASE.

1. Procedure.

Appellant, Matthew F. Usciak, appeared before the Honorable Anthony R. Appel and a jury on June 22, 1972, charged with bookmaking (47-1970). A pre-trial motion to suppress evidence had been filed; a hearing was held on June 18, 1970, and Judge Appel denied the motion. Appellant was subsequently found guilty of bookmaking. Post-trial motions were denied. Appellant, who is fifty-two (52) years old and who has never been convicted of any crime, was sentenced to three to six months (3 to 6 months) imprisonment. An appeal followed to the Superior Court which affirmed per curiam on September 15, 1972. A Petition for Allowance of Appeal was presented to the Supreme Court of Pennsylvania on October 31, 1972, and was denied on December 11, 1972.

2. History of the Case.

On February 9, 1970, a search and seizure warrant was obtained by Detective Joseph Geesey, of the Lancaster City Police Department, for petitioner's residence at 441 College Avenue, Lancaster, Pennsylvania. The warrant was turned over to Officer Barnard Grimm.

Officer Grimm disguised himself in the uniform of a Lancaster City Fireman. In the company of a genuine fireman, Captain Ernest Woerner of the Lancaster City Fire Department, Officer Grimm drove to petitioner's residence in a red Fire Department vehicle (R. 15-16).

The two of them approached the rear door and observed petitioner through a window as he talked on the telephone (R. 17). They knocked on the door and when petitioner answered it, he was told that policeman Grimm was "Fire Inspector Grimm" of the City Fire Department and that they were conducting a fire prevention inspection

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in the area (R. 18). According to the Officer's testimony, the petitioner then asked, "Would you like to come in?" and opened the door all the way.

Officer Grimm stepped over the threshold and stated that he was a police officer with a search warrant for petitioner's house (R. 35-36). Petitioner stepped back and the officer entered the kitchen. Only then realizing the deception, petitioner began to push Officer Grimm back out on the porch. Petitioner was seized and handcuffed (R. 37-38).

This testimony is directly contradicted by petitioner who testified that on the day in question while he was waiting for his wife to return he heard a knock on the door. "I went to the back door, put my hand on the knob and the officer jerked it out and I stumbled out on the back porch. And somebody grabbed me from the back, I lost one slipper on the porch, I heard a beep, three men came running from back of the driveway, picked me up off the ground, threw me in the kitchen, I went up against the kitchen table, lost my other slipper, they threw me toward the other end of the kitchen. And it seemed like everybody was holding me, handcuffing me, and then somebody said something about you're under arrest." (R. 21). Several more police officers arrived immediately thereafter and petitioner's house was searched. Two "rundown sheets," daily newspapers, a ballpoint pen and a multi-band radio were seized, allegedly as evidence of illegal bookmaking.

The Trial Court credited the testimony of Officer Grimm. "Since we have accepted the testimony of Grimm that announcement of identity and purpose was made, we conclude that the conflicting testimony concerning the scuffle is of no significance." (op. p. 4).

The Superior Court ignored the testimony of Officer Grimm and accepted the testimony of petitioner that the fireman's deception had nothing to do with his opening the door and that petitioner's opening of the door was unrelated to the use of the fireman's outfit.

REASONS FOR GRANTING THE WRIT.

1. The Decision of the Pennsylvania Court Raises Significant and Recurring Problems Which Have Received Conflicting Treatment From Other State and Federal Courts, and Which Have Not Yet Been Resolved by This Court.

The Pennsylvania Supreme Court's denial of the Petition for Allowance of Appeal in the instant case, affirming the decisions of the Pennsylvania Superior Court and the Court of Common Pleas of Lancaster County, has the deleterious effect of permitting policemen to misrepresent identity in order to gain entrance to a suspect's home to serve a search warrant. The constitutionality of such ruse or misrepresentation has been the subject of much dissension and discussion among the various Federal and State Courts. This Court's decision in *Sabbath v. United States,* 391 U. S. 585 (1968), which deliberately reserved decision on this issue, has created a confusion which only this Court can resolve.

There is growing uncertainty about the degree of force, if any, required during an entry by ruse. Nearly every Court considering the problem has struggled with this Court's decision in *Sabbath.* It is the duty of this Court to explain the applicable standard so that the Court's interpretation of 18 U. S. C. § 3109 may be fully understood. Pennsylvania, like most other States has adopted this Court's interpretation of the requirement of announcement. See *Commonwealth v. Newman,* 429 Pa. 657 (1968).[1] For this Court to retreat from a decision on this critical point at a time when police are required to rely more and more on search warrants would leave the Courts, prosecutors and defendants alike in a constitutional limbo.

1. See *Commonwealth v. Riccardi,* 220 Pa. Super. 72, 283 A. 2d 719 (1971).

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The Fifth Circuit stands as an example of the total bewilderment that surrounds the question of fraud or ruse in gaining entry to premises to be searched. In *United States v. Beale,* 436 F. 2d 573 (1971), that Court, speaking through Tuttle, J., held that the underlying rationale of *Sabbath v. United States, supra* required that a search effected by having a hotel manager knock at a suspect's room and only announcing his presence in order to have the suspect open the door for police armed with a warrant, violated the provisions of 18 U. S. C. § 3109.

Judge Tuttle held that:

"The thrust of this decision [*Sabbath*] requires that we hold that entry by use of deception, even where force is not involved, is governed by § 3109. Indeed, we can see no meaningful difference between gaining entrance into one's hotel room by pretending there is a visit by the hotel manager and by using the manager's passkey . . . In short, the agents' failure to announce their purpose and identity invalidates appellant's arrest and makes inadmissable the fruits of the search made incident thereto." *Id.* at p. 575.

On rehearing, however, the Fifth Circuit vacated its earlier decision, holding that since the police gained entrance by having the hotel manager knock on the defendant's door, no force had been used within the meaning of section 3109. 445 F. 2d 977 (1971). It held that some force, albeit minimal, in the sense of physical action by the officer to remove the barrier that prevents his entry, was required to invalidate the entry. 445 F. 2d at p. 987. Asserting this distinction as its reason for reversing its holding, the Court went on to say:

"We are not without doubts. The 'fundamental values' and 'on going development' to which *Sabbath* refers

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> . . . include a broadening recognition of the citizen's right to privacy. Nevertheless we conclude that if entry by deception and wholly without application of force is to be brought within § 3109, it should be by the Supreme Court." *Ibid.*

The second *Beale* Court purported to rely on pre-*Sabbath* law: *Leahy v. United States,* 272 F. 2d 487 (9th Cir. 1959) *cert. dismissed,* 364 U. S. 945 (1960). That Court held that "misrepresentation of identity in order to gain admittance is not a breaking within the meaning of the statute [18 U. S. C. 3109]" (p. 489), and that some force would be required before the Court would declare a violation of the statute. See for example: *Smith v. United States,* 357 F. 2d 486, 488, n. 1 (5th Cir. 1966); *Dickey v. United States,* 332 F. 2d 773 (9th Cir.) *cert. denied,* 379 U. S. 948 (1964); *United States v. Conti,* 361 F. 2d 153, 157 (2nd Cir. 1966).

In *Gatewood v. United States,* 209 F. 2d 789 (D. C. Cir.) (1953) the United States Court of Appeals for the District of Columbia declared a search illegal because a ruse "—from Western Union—" had been employed to have an occupant partially open a door. When the occupant sought to close the door force was used by the police to gain entry. The Court reasoned that the combination of the ruse and the resultant force destroyed the validity of the entry. There the Court held that "[e]ntry by stealth can, of course, be as unlawful as entry by the illegal use of force." 209 F. 2d at 791 n.1.

In a post-*Sabbath* case the Ninth Circuit relying on its decision in *Leahy v. United States, supra,* upheld a search conducted by California officers through the use of a ruse to gain entry, *Ponce v. Craven,* 409 F. 2d 621 (1969). The Court adopted the reasoning of the California Appellate Courts which held in *People v. Quilan,* 245 Calif. App. 2d 624, 628, 54 Calif. Rptr. 294, 298 (1966):

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> "Constitutionally proscribed trickery is that in which an officer obtains entry by subterfuge to a place where he has no right to be. Stratagem in itself is not illegal; it may be used for example, to gain entry in order to effect a lawful arrest." 409 F. 2d at 626.

In *United States v. Syler,* 430 F. 2d 68 (1970), the Seventh Circuit followed the holding of the Ninth Circuit, in holding that 18 U. S. C. § 3109 was not violated by use of ruse without force. See also *United States v. Bradley,* 455 F. 2d 1181 (1st Cir., 1971), and *United States v. Macri,* 185 F. Supp. 144 (D. C. Conn. 1960), where a distinction was again drawn between entry by ruse with force and such entry without force.

For conflicting decisions, however, see *Bowers v. Coiner,* 309 F. Supp. 1064 (S. D. W. Va. 1970). The United States District Court for the Southern District of West Virginia held there that, pursuant to the Supreme Court's opinions in *Miller v. United States,* 357 U. S. 301 (1958) and *Wong Sun v. United States,* 371 U. S. 471 (1963), entrance by use of ruse or deception was unconstitutional. The Court quoted this Court's dictum in *Wong Sun,* that the narcotics agent's "entrance was considered unlawful because he could not dispel the 'misimpression engendered by his own ruse.' . . ." 309 F. Supp. at p. 1069.

The District Court in *United States v. Burruss,* 306 F. Supp. 915 (1969) (E. D. Pa.), stated that *Sabbath* "strongly suggests that the gravamen of a violation of § 3109 is that the entry is unannounced rather than that it is peaceful."

The use of force in the instant case is not at all clear cut, even if this Court decides that a minimal amount of force is required. The Superior Court of Pennsylvania apparently found that the door was opened voluntarily by the defendant; this was directly against the finding of the trial court, and the statement in the record, that the police *had* gained entry by trick.

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In light of the considerable confusion that surrounds the issue this Court must at the very least decide the issue. It should be noted that where, as in the instant case, the police *have* a valid search warrant, they are required by 18 U. S. C. § 3109 and Pennsylvania's adoption of its standards in *Commonwealth v. Newman*, 429 Pa. 657 (1968), to announce their identity and purpose *except where there are exigent circumstances.*

2. The Writ Should Be Granted to Determine a Significant Constitutional Question Never Decided in This Court, of the Utilization by Police of Trickery in Executing a Search Warrant.

The decision of the Pennsylvania Supreme Court, refusing to hold invalid a search conducted after the police gained entry through trickery, raised important constitutional and policy considerations. In the past, this Court has declined to act on the question of whether a utilization by police of trickery and disguises to gain entry to premises in the course of executing a search warrant renders that warrant invalid. See *Sabbath v. United States*, 391 U. S. 585 (1968).[2] The rationale of *Sabbath*, suggests however, that this Court's interpretation of the requirements of 18 U. S. C. § 3109 compel that entry by trick or stealth be equated with an unannounced, forcible entry and therefore must be held to violate the statute. The opinion rejects a "grudging application of 18 U. S. C. § 3109 which would hold that 'force' is an indispensible element of the statute." Id. at 833. The opinion emphasizes further that "an unannounced intrusion into a dwelling . . . is no less an unannounced intrusion whether officers break down a door, . . . or, as here, open a closed but unlocked door. The protection afforded by, and the values inherent in, § 3109, must be

2. See 391 U. S. 590 n.7.

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'governed by something more than the fortuitous circumstance of an unlocked door.' . . ." *Id.* at p. 834.

If section 3109 must not, as this Court has said, be governed by something "fortuitous", it clearly should not be governed by a deliberate and elaborate act of misrepresentation, as has occurred in the instant case. As the United States District Court for the Eastern District of Pennsylvania stated in *United States v. Burruss, supra,* the "gravamen" of 18 U. S. C. § 3109 is that "the entry is unannounced" *Id.* at p. 520.

The purpose behind the "knock and announce" rule, except where there are exigent circumstances (which are clearly defined by the Court), is that "regardless of how great the probable cause to believe a man guilty of a crime, he must be given a reasonable opportunity to surrender his privacy voluntarily." *United States ex rel. Ametrane v. Gable,* 276 F. Supp. 555 (E. D. Pa. 1967), at 559. The United States Court of Appeals for the Third Circuit held in *United States ex rel. Manduchi v. Tracy,* 350 F. 2d 658 (3d Cir. 1965), that even where state police officers announce their identity and purpose, forcible entry is still unreasonable and violates the Fourth Amendment if the occupants are not given the opportunity to surrender the premises voluntarily. Opportunity means more than an instant in which a defendant is told that the person who has just entered his house is not whom he was led to believe, but is a police officer; by the utilization of such a ruse, the police were able to avoid both the affirmative requirements of announcement of identity and purpose, and the effect of a forcible entry.

Because the disagreement among the various Courts has become so pronounced, particularly following this Court's decision in *Sabbath, supra,* this Court is respectfully requested to resolve this issue which reaches the crux of the protection afforded by the Fourth Amendment.

The *Sabbath* Court was careful to point out that entries effected by the use of a passkey, though involving no actual force, were illegal because it requires some force to rotate a doorknob. See *e.g. Munoz v. United States,* 325 F. 2d 23, 26 (9th Cir.) (1963) and cases cited at n. 6, 391 U. S. at 590.

It is also important to note that Justice Marshall, writing for the Court in *Sabbath,* found a useful analogy in the common law and case law development of the law of burglary, noting that a forcible entry is generally no longer required. He notes that "[c]ommentators on the law of arrest have viewed the development of that body of law as similar." 391 U. S. at 589-90 n. 5. See H. Voorhees, Law of Arrest § 159, 172-173 (1904); Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 798, 806 (1924).

Certainly, if this reasoning is sound, an entry by ruse is no less offensive than the use of a passkey or the opening of an unlocked door.

This Court's reasoning in *Sabbath* (which the Court decided 8-1) constituted an enlightened view of the expanding nature of a Fourth Amendment right deeply engraved in our Common law:

> "To be sure the statute [3109] uses the phrase 'break open' and that connotes some use of force. But linguistic analysis seldom is adequate when a statute is designed to incorporate fundamental values and the development of the Common Law . . .
>
> An unannounced intrusion into a dwelling—what § 3109 basically proscribes—is no less an unannounced intrusion whether officers broke down a door, force open a chain lock or partially open door, open a locked door by use of a passkey, or, as have, open a closed but unlocked door." (citations omitted). 391 U. S. at 589-90.

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Immediately after stating the above-quoted remarks this Court indicated it was not dealing at that time with entries by ruse, 391 U. S. at 590, n. 7. It seems clear however that the Court's remarks were prompted solely by judicial restraint and not by any view that the ruse situation differed in any manner. The Court is now presented with an actual controversy involving the use of ruse, and the logic of its holding in *Sabbath* compels reversal in the case at bar.

CONCLUSION.

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Pennsylvania courts.

Respectfully submitted,

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Appendix

OPINION AND JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA.

PER CURIAM:

Contrary to appellant's position, this case does not present the interesting and difficult question of whether this Court should approve the whimsical ruse of a policeman who dressed himself as a fireman in order to have a door of a home opened without being subjected to any delay in carrying out a search warrant.[1] The record does not show that the reason the defendant opened the door was because he thought a fireman was seeking admittance.

The defendant testified that he did not open the door but that it was jerked open by the officer. The two officers involved testified that the door had been opened by the defendant. The court below was not bound to accept the defendant's version, and there was no evidence that the ruse caused the defendant to open the door.

Judgment affirmed.

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1. The issue has been stated to be an open one. *United States v. Sabbath*, 391 U. S. 585, 590 (1968); *Com. v. Riccardi*, 220 Pa. Superior Ct. 72, 76, 283 A. 2d 719, 722 (1971).

OPINION AND JUDGMENT OF THE COURT OF COMMON PLEAS OF LANCASTER COUNTY.

APPEL, *J.*

The defendant was indicted, tried and convicted by a jury of Bookmaking. There followed motions in arrest of judgment and for a new trial which were argued before the court en banc.

The defendant has assigned the usual general reasons, i.e., verdict against the law, verdict against the evidence and verdict against the weight of the evidence, for his motions; however, the main thrust of his effort has been (1) that the court erred in overruling his motion to suppress evidence and (2) that the handwriting on a rundown sheet found at the home of the defendant not having been identified as that of the defendant there was insufficient evidence to sustain a conviction.

The motion to suppress, as to which testimony was taken separately, and objections to testimony during trial involve the following situation.

Detective Geesey of the Lancaster City Police Department properly obtained search warrants for the person of Matthew F. Usciak, and for his residence at 441 College Avenue, Lancaster, Pennsylvania. The warrants were given to Officer Grimm of the same Department. Grimm, dressed in a uniform of the Lancaster Fire Department, joined Captain Woerner of the Fire Department, the latter also being in a similar uniform. The two then drove to Usciak's home on College Avenue in a red Fire Department marked vehicle.

Grimm and Woerner walked to the back of the House, ascended the porch and presented themselves at the rear door which opened onto the porch at a level one step higher than the porch. Grimm observed Usciak through a window as he was coming up the porch steps. Captain Woer-

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knocked on the door which was then partially opened by Usciak. Woerner told Usciak that they were from the City Fire Department and were conducting fire prevention inspections in the area to which Usciak responded by inviting them to come in and Usciak then opened the door the rest of the way. The next step, which is the crux of the entire matter, was described by Grimm in his testimony at page 9 as follows: "And, at that time, I stepped in front of Captain Woerner, still on the rear porch, my foot was on the cement step, the cement step was outside the premises. And I said Mr. Usciak and he nodded his head yes and I said, I'm Officer Grimm from the Lancaster City Police Department, and I have a search warrant for this house,' and he nodded his head at this time and at this point—" and continuing after discussion at sidebar: "I had told him that I had a search warrant for the house and at that time I asked Mr. Usciak to step back into the kitchen and he went up right off that step and he started to go back into the kitchen partially and I followed him and Captain Woerner followed him. And suddenly he stopped and gave me a shove and ran out toward the back porch and I grabbed him immediately. A tussle ensued, the tussle ensued out onto the back porch and back into the kitchen again and I held Mr. Usciak from behind until the arrival of the other police officers.

Subsequent to the events above related and within the defendant's home Mr. Usciak made some remarks and the police found various articles. The remarks and articles were admitted into evidence at the trial over defendant's motion and objections.

The requirements imposed on an officer in executing a search warrant are set forth in Commonwealth v. Newman, 429 Pa. 441 (1968), as follows: "An announcement of both authority and purpose is required before a door can be broken down, absent exigent circumstances. It is clear that

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established federal constitutional standards are the minimum which must be satisfied in determining if the force used in the execution of a search warrant was proper. Mapp v. Ohio, 367 U. S. 643, 81 S. Ct. 1684 (1961); Ker v. California, 374 U. S. 23, 83 S. Ct. 1623 (1963). These standards require that the method of entry be 'reasonable.' Ker v. California, supra. Several recent cases arising in Pennsylvania have given content to 'reasonable,' so that the constitutional standards appear to be those embodied in 18 U. S. C. § 3109: 'The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance, . . .' " With reference to the effect of United States ex rel. Ametrane v. Gable, 276 F. Supp. 555, the opinion contains the following discussion concerning the notice to be given: "The district court found that 'although the officers possibly may have identified themselves before entering, they did not state their purpose or show their warrants.' 276 F. Supp. at 557. They were required to state their purpose: 'The fourth amendment prohibition against unreasonable search and seizure clearly demands that, ordinarily before a police officer enters upon private premises to conduct a search or to make an arrest, he must give notice of his identity *and purpose;* the only exception is when exigent circumstances justify the failure to give notice.' (Emphasis added) 276 F. Supp. at 557. Nor is it too much to expect of the officers to announce their purpose in demanding admission. As the United States Supreme Court pointed out in Miller v. United States, 357 U. S. 301, 309, 78 S. Ct. 1190 (1958): 'The burden of making an express announcement is certainly slight. A few more words by the officers would have satisfied the requirements in this case.' "

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The defendant did not testify at the trial, however, he did testify at the suppression hearing. According to his testimony the tussle described by Grimm took place on the back porch before the officer ever entered the house. Since we have accepted the testimony of Grimm that announcement of identity and purpose was made, we conclude that the conflicting testimony concerning the scuffle is of no significance.

In the present case the officer has testified that he announced that he was a police officer and that he had a search warrant. By these statements he announced authority and he announced purpose whereby the requirements were fulfilled.

The defendant has suggested that the ruse, trickery or deceit exercised in approaching the house militates against the admission of any of the evidence resulting from the search. In support of his position he cites Commonwealth v. Wright, 411 Pa. Superior 81, (1963) and the cases there discussed. Wright had been taken into custody in connection with a killing after which the police investigating officers went to his apartment without having obtained a search warrant. They met defendant's wife in the hallway, told her that her husband was under arrest and "that he had admitted the crime and sent them for the 'stuff.' This latter statement was false." She admitted them and in their search the police found the evidence, the admission of which the defendant moved to suppress. The court suppressed stating: "The seizure was gained through the use of deceit and misrepresentation. This vitiated the seizure just as effectively as if a search were involved."

Our question then is whether the wearing of a fireman's uniform by a police officer accompanied by a fireman similarly attired in the circumstances described is an employment of deceit and misrepresentation. Bearing on an analysis of the question are the following statements by

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different Chief Justices of the Supreme Court of the United States, each of whom is respected and revered by different segments of the legal profession, the judiciary and society. In Sorrells v. United States, 287 U. S. 435, (1932), Mr. Chief Justice Hughes wrote: "Artifice and stratagem may be employed to catch those engaged in criminal enterprises." Twenty-six years later Mr. Chief Justice Warren wrote: "Criminal activity is such that stealth and strategy are necessary weapons in the arsenal of the police officer." Sherman v. United States, 356 U. S. 369, (1958).

On the one hand we have deceit and misrepresentation and on the other hand we have artifice, strategy and stealth. The one is taboo, the other is approved. It may be argued that a misrepresentation takes place whenever a law enforcement official appears in something other than the uniform of his service. However, detectives rarely, if ever, wear the uniform of the force of which they are members. This practice is recognized as a necessary weapon in the arsenal of the police officer.

It is our opinion that the events leading up to entry by the officer into the home of the defendant do not vitiate the seizure.

One other contention advanced by the defendant requires comment. It is that the items which were found by the police, i.e., the ball point pen, multiband radio and newspapers, do not establish bookmaking, that the only evidence which bears on bookmaking is a rundown sheet found in the residence but never identified as being in the handwriting of the defendant. The various items taken and the statements of the defendant, such as "you don't have to bother, I'm guilty, just get me out of here, I want to get out of here before my family comes home and I want to plead guilty to this," all taken together amount to a quantity and quality of evidence which in our opinion is sufficient to sustain the jury's verdict even without proof of the handwriting.

Order.

AND Now, March 10, 1971, the defendant's motions in arrest of judgment and for a new trial are dismissed and the defendant is directed to appear for sentence at the call of the District Attorney.

By THE COURT:
ANTHONY R. APPEL,
Judge.

ORDER OF SUPREME COURT OF PENNSYLVANIA.

December 11, 1972

Petition Denied.

PER CURIAM.